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4 UNITED STATES OF AMERICA
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 PETER J. LANGE,

8 Plaintiff,

9 v.

10 TIMOTHY D. THOMPSON,

11 Defendant.
12

Case No. C08-0271MJP

ORDER DENYING
PLAINTIFF'S MOTION FOR
DEFAULT, DENYING
DEFENDANT'S MOTION FOR
SANCTIONS, AND
GRANTING DEFENDANT'S
MOTION TO DISMISS

13 This matter comes before the Court on Plaintiff's motion for default (Dkt. No. 9), and
14 Defendant's motion to dismiss and for sanctions. (Dkt. No. 8). Plaintiff has filed a response to
15 Defendant's motion to dismiss. (Dkt. No. 13.) Having considered the motions, response, all
16 papers submitted in support thereof, and the balance of the record, the Court DENIES the motion
17 for default, DENIES the motion for sanctions, but GRANTS the motion to dismiss.

18 **Background**

19 Plaintiff Peter J. Lange, a resident of Washington, bought a cell phone on eBay, an online
20 auction and shopping website, from Defendant Timothy D. Thompson, a resident of Tennessee.
21 Mr. Thompson shipped the cell phone to Mr. Lange in Washington. When Mr. Lange received
22 the cell phone, he found that it was defective, and contacted Mr. Thompson about the problem.
23 After not receiving a response, Mr. Lange filed a dispute with Paypal, an e-commerce service
24 that facilitates internet payments and money transfers on the internet, and later received a refund.
25 Mr. Lange posted "neutral" feedback on Mr. Thompson's eBay profile, and Mr. Thompson
26 posted "negative" feedback on Mr. Lange's profile. Mr. Lange applied for mediation to make
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1 Mr. Thompson remove the negative feedback, but Mr. Thompson refused to go to mediation.
2 (Compl. ¶ 17.)

3 Mr. Lange filed a lawsuit in King County District Court to make Mr. Thompson remove
4 the negative feedback, but the court declined jurisdiction. He then filed suit in the Superior
5 Court, which denied jurisdiction because of “diversity.” (Compl. ¶ 17.) Finally, acting pro se,
6 he filed a complaint in federal court, alleging that Mr. Thompson caused Plaintiff to lose
7 business and damaged his reputation, and requesting a court order to remove the negative
8 feedback and damages in an amount exceeding \$100,000. (Compl. ¶ 19.) When Mr. Thompson
9 failed to appear or respond within the time prescribed by the Federal Rules, Mr. Lange filed a
10 motion for default. Mr. Thompson then appeared pro se, filed a motion to dismiss on personal
11 jurisdiction grounds, and also moved for sanctions.

12 Discussion

13 I. Plaintiff’s Motion for Default

14 Plaintiff requests that the Court enter default judgment against Defendant because he
15 failed to answer or otherwise respond to the complaint within the time required by the federal
16 rules. The district court is required to exercise sound judicial discretion in determining whether
17 judgment by default should be entered. Fed. R. Civ. P. 55(b). Additionally, for “good cause
18 shown” an entry of default may be set aside and a default judgment may be vacated in
19 accordance with Rule 60(b). Id. (c). Even though Mr. Thompson failed to appear or respond to
20 the complaint within the prescribed time, the Court has the ability to exercise its discretion and
21 refuse to enter default judgment. Here, by filing a motion to dismiss and for sanctions,
22 Defendant Thompson has indicated that he intends to participate in the litigation. Because Mr.
23 Thompson would have grounds to request relief from the default judgment, the Court exercises
24 its discretion and declines to enter default judgment.

25 II. Defendant’s Motion for Sanctions

26 Defendant moves for Rule 11 sanctions against Plaintiff, arguing that Plaintiff filed this
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1 action as an attempt to forum shop. The safe harbor provision under Federal Rule 11 requires
2 that before filing or presenting a motion for sanctions to the Court, a party serve the motion to
3 the other party, so that the challenged action can be withdrawn or appropriately corrected within
4 21 days after the motion is served. Fed. R. Civ. P. 11(C)(1)(A). Defendant has presented no
5 evidence suggesting that he presented the motion for sanctions to Plaintiff before filing it with
6 the Court. Because he did not follow the safe harbor provisions, the Court denies Defendant's
7 motion for sanctions under Rule 11.

8 **III. Defendant's Motion to Dismiss**

9 Defendant moves to dismiss its complaint for lack of personal jurisdiction. When the
10 Court acts on a motion to dismiss without first holding an evidentiary hearing, Plaintiff only has
11 the burden of making a prima facie showing that the Court has personal jurisdiction over the
12 Defendant to withstand the motion to dismiss. Harris Rutsky & Co. Ins. Servs. v. Bell &
13 Clements Ltd., 328 F.3d 1122, 1129 (9th Cir. 2003). Additionally, unless directly contravened,
14 Plaintiff's version of the facts is taken as true, and conflicts between the facts are resolved in
15 Plaintiff's favor. Id. Furthermore, where, as here, there is no applicable federal statute
16 governing personal jurisdiction, the law of the state in which the district court sits applies. Id.

17 This Court may exercise personal jurisdiction over a defendant when the Washington's
18 long-arm statute creates personal jurisdiction over the defendant and the exercise of personal
19 jurisdiction is consistent with the due process requirements. See Lee v. City of Los Angeles, 250
20 F.3d 668, 692 (9th Cir. 2001). Where, as here, there are no allegations that the defendant has
21 continuous and systematic contact with the forum state, general jurisdiction is not applicable.
22 See Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000).
23 Washington's long-arm statute provides for specific personal jurisdiction over nonresident
24 defendants when, among other things, the defendant transacts business or commits a tort here.
25 RCW 4.28.185(1)(a),(b). Due process requires that a defendant have minimum contacts with the
26 forum state so that the defendant should reasonably anticipate being haled into court here. Int'l

1 Shoe Co. v. Wash., 326 U.S. 310, 316 (1945); see also World-Wide Volkswagen v. Woodson,
2 444 U.S. 286, 297 (1980).

3 Specifically, specific personal jurisdiction exists where: (1) the non-resident defendant
4 purposefully directed his activity or consummated a transaction with the forum or a resident
5 thereof, or purposefully availed himself of the privilege of conducting activities in the forum; (2)
6 the claim arises out of or relates to the defendant's forum-related activities; and (3) the exercise
7 of jurisdiction is reasonable. Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 801-02
8 (9th Cir. 2004). Plaintiff has the burden of showing the first two prongs of the test, and if he can
9 do so, the burden shifts to Defendant to present a "compelling case" that jurisdiction would be
10 unreasonable. Id. The primary question here is whether Defendant purposefully directed his
11 activity toward or purposefully availed himself of the privilege of conducting activities in
12 Washington.

13 In judging minimum contacts when the cause of action involves intentional torts such as
14 defamation, defendant's intentional and alleged tortious actions must be expressly aimed at the
15 forum such that the forum can be said to be the focal point of the activity and the harm suffered.
16 Calder v. Jones, 465 U.S. 783, 789 (1984). When applying Calder to the internet context,
17 specific jurisdiction may be based only on the out-of-state defendant's internet activity expressly
18 aimed or directed to the forum state. Young v. New Haven Advocate, 315 F.3d 256, 262 (4th
19 Cir. 2002) (citing ALS Scan, Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707, 713 (4th Cir.
20 2002)).

21 In Young, a resident of Virginia sued two Connecticut newspapers in Virginia, alleging
22 that they defamed him in articles posted on the internet. Young, the plaintiff, argued that the
23 district court had specific personal jurisdiction over defendants because: (1) defendants knew
24 that Young was a Virginia resident, and intentionally defamed him in their articles; (2)
25 defendants posted the articles on a website accessible in Virginia; and (3) primary effects of the
26 defamatory statements on Young's reputation were felt in Virginia. Id. at 262. Young applied

1 ALS Scan's three part test for establishing specific jurisdiction in the internet context. Id. at 263.
2 A state may exercise jurisdiction over a person outside of the state when that person "(1) directs
3 electronic activity into the State; (2) with the manifested intent of engaging in business or other
4 interactions within the State; and (3) that activity creates, in person within the State, a potential
5 cause of action cognizable in the State's courts." ALS Scan, 293 F.3d at 714. The court held
6 that plaintiff did not prove that the defendant, through the internet postings, intended to target
7 and focus on Virginia audiences. Id. at 263. Therefore, defendants did not have sufficient
8 internet contacts with the forum state and the district court could not exercise specific
9 jurisdiction over them. Id. at 264.

10 Plaintiff has not established that Defendant's internet activity was expressly targeted at or
11 directed toward Washington. Defendant knew that Plaintiff was a Washington resident because
12 he sent the cell phone to Plaintiff's address. (Pl.'s Resp. at ¶ 2.) He also intentionally left
13 negative feedback on Plaintiff's internet profile. Id. Defendant posted the negative feedback on
14 a website that was accessible in Washington. Id. However, Plaintiff does not allege or show that
15 the primary effects of the negative feedback were felt in Washington, and does not show that
16 Defendant directed the negative feedback toward Washington residents. Washington is not the
17 focal point of Defendant's activity or of Plaintiff's harm suffered; therefore, Defendant does not
18 have sufficient contacts with Washington to confer specific jurisdiction on this Court.

19 Plaintiff also alleges that Defendant has contacts with Washington because Defendant
20 sent Plaintiff an e-mail, in which he stated: "I may be coming towards Seattle next summer [...]"
21 (Pl.'s Resp. at ¶ 3.) Defendant's possible visit is unrelated to Plaintiff's injury and is not
22 sufficient to permit exercising personal jurisdiction in Washington. See Shaffer v. McFadden,
23 125 Wn.App. 364, 370-71 (2005). The Court concludes that it does not have personal
24 jurisdiction over Defendant.

25 **Conclusion**

26 Plaintiff's motion for default and Defendant's motion for sanctions are denied.

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Defendant’s motion to dismiss is granted for lack of personal jurisdiction over Defendant.
The clerk is directed to send copies of this order to both parties.
Filed this 6th day of August, 2008.

s/ Marsha J. Pechman
Marsha J. Pechman
United States District Judge